WC 07-102

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May 3, 2007

FILED/ACCEPTED

MAY 3 – 2007

Federal Communications Commission
Office of the Secretary

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: *Petition for Declaratory Ruling of Interior Telephone Company, Inc.*

Dear Ms. Dortch:

Attached for filing with the Commission please find a Petition for Declaratory Ruling requesting that the Federal Communications Commission (the "Commission") issue a declaratory ruling with respect to 47 C.F.R. § 57.715. The Petition is being submitted via the Commission's electronic filing system.

Please feel free to contact the undersigned if you have any questions regarding this Petition.

Sincerely yours,

Stefan M. Lopatkiewicz
Counsel to Interior Telephone Co., Inc.

Enclosure

cc: Tom Navin, Chief, Wireline Competition Bureau

FILED/ACCEPTED

MAY 3 – 2007

Federal Communications Commission
Office of the Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Interior Telephone Company, Inc.	)	WC Docket No.
Petition for Declaratory Ruling On the Scope of the Duty of a Rural Local Exchange Carrier to Provide Interim Interconnection	)	

PETITION FOR DECLARATORY RULING OF INTERIOR TELEPHONE COMPANY, INC.

Interior Telephone Company, Inc. ("Interior"),[1] by its counsel and pursuant to Section 1.2 of the Commission's rules,[2] respectfully requests a declaratory ruling with respect to 47 C.F.R. § 57.715.

INTRODUCTION AND EXECUTIVE SUMMARY

This Petition addresses a limited question regarding the Commission's rules that has caused uncertainty during the negotiation of an interconnection agreement under Sections 251(a) and (b) of the Communications Act ("the Act") between Interior, an incumbent, rural local exchange company ("ILEC"), and General Communication, Inc. ("GCI"), a competitive LEC: whether Section 51.175 of the Commission's rules requires the ILEC to offer immediate

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1 Interior is a rural local exchange company in Alaska that operates in a number of non-contiguous exchanges, the largest of which is Seward.

interconnection to exchange local traffic in the period before a final interconnection agreement is reached through the negotiation and arbitration process pursuant to Section 252 of the Act, when agreement has not been reached by the parties on non-pricing terms.

GCI was certificated by the Regulatory Commission of Alaska ("RCA") to provide competitive local exchange services in Interior's study area in February 2006.[3] GCI requested an interconnection agreement with Interior by letter dated October 19, 2006. On December 20, 2006, Interior and GCI entered into an Agreement that established the terms under which the parties were to conduct their negotiation. Consistent with Section 252 of the Act, the Agreement established, among other things, the time line in which the parties would proceed with the negotiation and, if necessary, arbitration of a final interconnection agreement. That time line set January 24, 2007 as the commencement date for a 120-day period of negotiations, ending May 24, 2007.

As a basis for negotiation, GCI has delivered to Interior an 80-page working draft of an interconnection agreement, which follows a format that was partially negotiated by GCI with another Alaska ILEC; certain provisions of that agreement are scheduled to be arbitrated this summer. In addition to a section addressing interconnection, the draft covers such topics as resale at retail rates, ancillary services (including local number portability, E911 and access to poles, conduits and rights of way), dialing parity and support for interconnection services.

The draft is at this stage under review and comment by Interior. One significant point of disagreement that has emerged between the parties concerns the use of the interconnection agreement as a vehicle for transiting traffic across the networks of the parties for termination to

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2 47 C.F.R. § 1.2.

3 *See* RCA Order U-05-4(6) (rel. Feb.02, 2006).

customers of third-party carriers. On the other hand, the parties have tentatively agreed that their exchange of local traffic under the agreement will be conducted on a bill-and-keep basis.

On April 6, 2007, GCI sent Interior a letter titled "Request for Interim Interconnection and Transport and Termination of Traffic Pursuant to 47 C.F.R. 51.715." In this letter (Exhibit A attached), GCI requested that, under Section 51.715, Interior commence the exchange of local traffic with GCI on an interim basis on June 18, 2007, within the Seward exchange. In its letter, GCI suggested different network architectures that could be used by the parties to interconnect their systems. It also outlined a number of different options the parties could use for interim transport and termination rates. This request was made notwithstanding that GCI has yet to provide either Interior or the RCA notice of its intention to commence operations in Seward, which it is required to do at least 90 days in advance as a condition of its certification by the RCA.[4]

Interior responded to GCI on April 13, 2007 (Exhibit B attached) stating that it did not agree that Section 51.75 required it to offer immediate interim interconnection under the circumstances and, further, that immediate interim connection was not practical since various non-price terms for such interconnection remain unresolved at this point in the parties' negotiation. Interior stated that it understood that Section 51.715 is directed to the imposition of interim transport and termination rates when other salient terms for interconnection are established. Interior also informed GCI that pricing of the parties' interconnection was not at issue since it agreed with GCI on a bill-and-keep approach for reciprocal compensation.

On April 24, 2007, GCI sent a letter in response to Interior (Exhibit C attached). In this letter, GCI acknowledged that Interior and GCI have tentatively agreed to a bill-and-keep

arrangement, but continued to insist that the "plain language and purpose" of Section 51.715 gives it a right to require interconnection at the date of its choice -- June 18, 2007 -- regardless of whether the parties had agreed on non-price terms for interconnection. GCI suggested that the parties' existing "interconnection" facilities used for the termination of toll traffic in Seward could be employed for the exchange of local traffic. While acknowledging that the draft interconnection agreement under review is lengthy, GCI asserted that only a portion of the draft concerns technical and operational standards requiring the parties' agreement. It also stated that "any minor technical issues" could be resolved by the parties prior to the requested interim start date. In a footnote in small font on the last page of its letter, GCI stated that it was seeking a means to "test" the parties' interconnection in advance of its launch of "commercial services" in Seward, for which it acknowledged it would have to provide 90 days' advance notice, and that the commencement of "interconnection" would be required for such testing purposes. GCI essentially requested Interior to begin parallel discussions on both an interim arrangement and the parties' permanent agreement. Interior responded to GCI on May 2, 2007, confirming its readiness to conduct reasonable testing of the parties' interconnection prior to the established date for start of commercial service, but reiterating the impracticality of negotiating an interim interconnection arrangement in parallel with a permanent one (Exhibit D attached).

This petition by Interior seeks a Declaratory Ruling by the Commission on the scope of Section 51.75. Specifically, Interior requests that the Commission clarify that Section 51.715 requires only that an ILEC provide interim transport and termination *pricing*, and not interim *interconnection,* when it is in the midst of negotiations under Section 252 of the Act regarding non-price terms for interconnection and is not waiting on the conclusion of an economic study

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4 RCA Order U-05-4(6), 24.

that determines the rates to be used in the underlying, negotiated agreement. Guidance from the Commission is necessary to "remove uncertainty" within the meaning of Section 1.2 of the Commission's Rules and to achieve a uniform interpretation and implementation of this rule that could have a significant effect on interconnection negotiations. Interior submits that GCI's effort to invoke Section 51.715 in this case would significantly and unfairly burden ILECs in the course of the Section 252 negotiation process, and would circumvent Congress' objectives in the Act.

The Commission promulgated Section 51.75 because it was concerned that negotiated interconnection agreements which lacked agreement on a rate for reciprocal compensation would be unduly delayed due to the fact that state commission cost studies to determine forward-looking rates for interconnection were not subject to the same statutory timeline that Congress had established for interconnection and arbitration in Section 252 of the Act. The Commission was concerned that this delay could harm competitive carriers that have otherwise completed negotiated interconnection agreements with incumbent carriers, but must wait to provide service upon the conclusion of the economic studies, which could prove quite lengthy.

GCI, however, is seeking to use Section 51.715 to establish that requesting carriers have a *general* right to demand interim interconnection while the Section 252 interconnection negotiations regarding non-price terms for interconnection are still in progress, in the absence of any disagreement on the rates for reciprocal compensation or of any pending proceedings that might exceed the time period for negotiation and arbitration under the Act.

GCI's interpretation of Section 51.715 conflicts with the Act. Allowing requesting carriers to immediately interconnect, upon demand, circumvents the process that Congress established for the negotiation and arbitration of interconnection agreements under Section 252

of the Act, and would place the ILEC at an unfair disadvantage in the negotiation process. In Section 252, Congress established timelines and procedures that carriers are obligated to follow to determine when and how they establish the terms and conditions to exchange local traffic. The terms and conditions of interconnection can be complicated and are often specific to the relationships between individual incumbent and competitive carriers. Thus, interpreting Section 51.75 to require more than interim pricing for the transport and termination of traffic in cases where non-pricing terms of interconnection have otherwise been established would place ILECs in a completely impractical position. This is particularly impractical for small, rural ILECs like Interior that lack the resources to sustain effectively parallel discussions on both a permanent interconnection agreement and an interim arrangement on non-pricing terms.

The Commission can remove the uncertainty that GCI's interpretation would inject into the Section 252 negotiation process by issuing a declaratory ruling that clarifies that Section 51.715 does not require an ILEC to offer immediate interconnection to exchange local traffic where the non-price terms of a final agreement governing interconnection have not been established yet through the negotiation and arbitration process, particularly when there is no pending proceeding outside the negotiations to develop rates that will impact the timing of the interconnection agreement. Such a determination will facilitate fulfillment of the Section 252 negotiation and arbitration process.

ARGUMENT

I. SECTION 51.715 APPLIES ONLY TO INTERIM TRANSPORT AND TERMINATION PRICING AND NOT INTERIM INTERCONNECTION

A. The *Local Competition Order* instructs that Section 51.715 was adopted to provide interim transport and termination pricing when the conclusion of an economic study to establish reciprocal compensation is pending.

Section 51.715 was promulgated in response to Commission concerns regarding the lengthy time required to conduct forward-looking, economic cost studies to establish symmetrical rates for reciprocal compensation. In the *Local Competition Order*,[5] the Commission expressed its concern that "some new entrants that do not already have interconnection arrangements with incumbent LECs may face delays in initiating service solely because of the need to negotiate transport and termination arrangements with the incumbent LEC."[6] The Commission clarified, however, that the real source of its concern lay in competitive entrants being blocked or delayed from getting to market as a result of their inability to negotiate favorable reciprocal compensation *rates* with incumbents through direct negotiations, and the fact that waiting for state commissions to establish default rates could take an extended period of time not subject to statutory constraint. The Commission explained:

> "In particular, a new entrant that has already constructed facilities may have a relatively weak bargaining position *because it may be forced to choose either to accept transport and termination rates not in accord with these rules or to delay its commencement of service until the conclusion of the arbitration and state approval process.*"[7]

To remedy this shortcoming in the statutory framework governing competitive entry, the Commission concluded that "section 251, in conjunction with our broad rulemaking authority

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5 *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (rel. Aug. 8, 1996) ("*Local Competition Order*").

6 *Id.*, ¶ 1065.

7 *Id.* (emphasis added).

under section 4(i), provides us with authority to create *interim pricing rules* to facilitate market entry."[8] Thus, the Commission saw its role as specifically creating a regime of "interim pricing rules," not of establishing a generalized entitlement to interim interconnection that would otherwise circumvent the statutory negotiation and arbitration procedure under Section 252.

This understanding of the Commission's reasoning underlying the adoption of Section 51.715 of its Rules is borne out by the extensive attention devoted in the *Local Competition Order* to the procedure for establishing reasonable transport and termination rates. For example, the Commission stated:

> "[a]s with unbundled network elements, we recognize that it may not be feasible for some state commissions conducting or reviewing economic studies to establish transport and termination rates using our TELRIC-based pricing methodology *within the time required for the arbitration process*, particularly given some states' resource limitations."[9]

The Commission was concerned that this delay between the conclusion of the arbitration process and the conclusion of economic studies may harm new carriers. Through Section 51.715, the Commission fashioned a way to reconcile the timelines that were set out in Section 252 of the Act with its concern that state commissions may require additional time to complete the

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[8] *Id.*, ¶ 1067 (emphasis added). The cases that the FCC cites as authority in the *Local Competition Order* for its ability to require interim pricing subject to true-up, are cases where the courts upheld the FCC's interim pricing authority. *See* fns. 2548 and 2549, citing *New England Tel. and Tel . Co. v. FCC, 826 F.2d 1101* (D.C. Cir 1987) (rejecting arguments that the FCC lacks the authority to order temporary rate reductions to reimburse customers for earnings that were in excess of the rate of return); *FTC Communications v. FCC*, 750 F.2d 226 (2d Cir.1984) (affirming the FCC's authority to set interim rates for interconnection between the domestic record carrier and international record carriers, subject to an accounting order, pending the conclusion of a rulemaking to set permanent rates replacing expired, contract-based rates); *Lincoln Tel. and Tel. Co. v. FCC*, 659 F.2d 1092, 1107 (D.C.Cir.1981) (upholding an FCC decision requiring an incumbent LEC to interconnect with MCI at interim rates subject to later adjustment at the conclusion of interconnection negotiations).

necessary economic studies needed to establish reciprocal compensation rates that were to be ultimately used in the negotiated agreements. It concluded that:

> "[t]he ability to interconnect with an incumbent LEC *prior to the completion of a forward-looking, economic cost study,* based on an interim presumptive price ceiling, allows carriers, including small entrants, to enter into local exchange service expeditiously."[10]

The Commission then explained at length that, in states that have already promulgated transport and termination rates based on completed forward-looking economic cost studies, an ILEC receiving a request for interim transport and termination shall use these state-determined rates as interim transport and termination rates. In states that have not conducted such studies but have otherwise set rates consistent with standards established by the FCC, the ILEC is to use such rates as interim rates. The Commission went on to adopt default rates for end office and tandem switching and for transport for states that have neither adopted forward-looking economic rates nor otherwise established rates consistent with its standards. Finally, the Commission instructed that state commissions must adopt "true-up" mechanisms to ensure that no carrier is disadvantaged by an interim rate that differs from the final rate established pursuant to negotiation or arbitration.[11]

Further, the thrust of the relevant provisions of the *Local Competition Order* evidences the Commission's focus on its ability to order interim pricing: the relevant paragraphs are all contained in the section entitled "Pricing Methodology," and include subtitles such as "Interim Transport and Termination Rate Levels," "Pricing Rule," "Cost-Based Pricing Methodology,"

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9 *Id.*, ¶ 1060 (emphasis added).
10 *Id.*, ¶ 1065 (emphasis added).
11 *Id.*, ¶ 1066.

and "Default Proxies."[12] The Commission's deliberate choice of words in categorizing the Rule demonstrate that it was concerned only with pricing, and not with other general terms of interconnection.

From the foregoing pricing paradigm established by the Commission in the *Local Competition Order,* it is evident that the Commission intended that the interim arrangement for the transport and termination of local traffic in Section 51.715 was offered as an alternative when a lengthy cost docket or arbitration threatened to thwart the statutory timeline for negotiating an interconnection agreement that was established in Section 252 of the Act.[13] This is quite distinct from completely preempting the statutory interconnection negotiation process by allowing competitive entrants to demand interim interconnection *in place of* negotiating or arbitrating the non-price terms for such interconnection, which could be beyond the Commission's authority to require.

B. The language of Section 51.715 limits its scope to interim transport and termination pricing, as opposed to other terms and conditions of interconnection.

A plain reading of Section 51.75 supports Interior's understanding that the Rule only provides an interim solution when the parties to an interconnection agreement are awaiting a decision on pricing, and not to the other terms of interconnection generally. First, the title of the regulation, "Interim transport and termination pricing," only concerns interim pricing.[14] Second,

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[12] *See Local Competition Order* at ¶¶ 1046 – 1068.

[13] No order of the Commission has been found subsequent to the *Local Competition Order* extending the reach of Section 51.715 to encompass non-pricing terms or otherwise clarifying the scope of the order. *See, e.g., In the Matter of Developing a Unified Intercarrier Compensation Regime, T-Mobile et. al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs,* 20 FCC Rcd 4855, 4864-4865 at ¶ 16 (rel. Feb. 24, 2005).

[14] In so doing, the regulation presumes that an interconnection agreement exists regarding how the two networks will transport and terminate one another's local traffic. This presumption is

the language of the rule clearly limits its application to interim pricing only. The rule provides that:

> "Upon request from a telecommunications carrier without an existing interconnection arrangement with an incumbent LEC, the incumbent LEC shall provide transport and termination of telecommunications traffic immediately under an interim arrangement, *pending resolution of negotiation or arbitration regarding transport and termination rates and approval of such rates* by a state commission under Sections 251 and 252 of the Act."[15]

Thus, while the rule language initially seems to address a situation in which there is *no* interconnection agreement, the Commission has expressly limited the scope of Section 51.75 to circumstances in which only transport and termination rates have not been agreed or otherwise established. That limitation cannot be simply read out of the regulation.

The substance of the rule sets forth details governing interim pricing arrangements. Subsection (b), 47 C.F.R. § 51.175(b), establishes the rates that carriers are to use in the interim pricing arrangements. 47 C.F.R. § 51.715(d) resolves the process the parties to an interim pricing agreement are to follow after the state commission concludes its rate proceeding. It instructs that "if the interim arrangement differ[s] from the rate established by a state commission pursuant to §51.705" the carriers must true-up the difference.[16] The rule's provisions demonstrate that the rule only provides for interim pricing arrangements; it is silent on non-pricing interconnection terms.

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not illogical, given that the assumption in the Telecommunications Act of 1996, and the *Local Competition Order*, is that the incumbent local exchange carrier is normally a large carrier (e.g., a Bell Operating Company). Here, however, the incumbent local exchange carrier is a small, rural carrier which does not have cookie-cutter agreements with multiple carriers.

15 47 C.F.R. § 51.715(a) (emphasis added).

16 47 C.F.R. § 51.715(d). The section incorporates 47 C.F.R. § 51.705, in which the Commission establishes the transportation and termination rates to be used in interconnection agreements.

These provisions demonstrate that the scope of 47 C.F.R. § 51.715 is limited to the imposition of interim pricing, and does not extend to all terms and conditions governing how competing carriers will transport and terminate one another's traffic. Moreover, any other reading of the regulation would lead to an impractical result, as it would require interconnection to be undertaken in the absence of agreement on the non-price terms governing the network architecture by which such interconnection is to be conducted.

C. Reading Section 51.715 to establish a general requirement for immediate interim interconnection would run counter to the framework of the Act.

Section 51.715 cannot be read to require immediate interconnection where the parties are in negotiations for non-price terms of interconnection because to do so would run counter to the statute on which it is based. In 47 U.S.C. § 252, Congress established time frames for negotiating and arbitrating interconnection agreements. The section establishes the time and process under which interconnection between an incumbent local exchange carrier and a requesting carrier will occur. Reading Section 51.715 as a general directive to require ILECs to provide interconnection while they are negotiating the terms of interconnection would preempt Congress' statutory timeframes by shortcutting them and requiring carriers to provide immediate interconnection despite them.

47 C.F.R. § 51.715 must be read in harmony with 47 U.S.C. § 252. This is accomplished only when the scope of Section 51.715 is limited to requiring only interim pricing if there are any proceedings for the development of rates for reciprocal compensation that could impact the timing of the implementation of the agreement, but the non-price terms of the agreement exist. Read this way, the two provisions work together, and the Commission's Rule does not conflict with the interconnection negotiation and arbitration requirements spelled out in Section 252 of the Act. Moreover, in the *Local Competition Order*, the Commission expressly invoked its

authority under Sections 4(i) and 251 of the Act to require interim *pricing*, not to require interim interconnection generally.[17]

D. The interim pricing regulation was not intended to preempt state law by authorizing interconnection of a CLEC before its authorization to provide service under state law becomes effective.

GCI's certification by the RCA to provide local exchange service in Interior's service area requires GCI to give 90 days prior notification to the RCA and the ILEC of its intention to commence service before it actually does so.[18] GCI has not yet provided notice of an intended start date for its service in Seward or in any other Interior exchange. As a result, GCI's request that Interior "commence exchanging local (*i.e.,* non-access) traffic with GCI, on an interim basis pending final negotiation and, if necessary, arbitration of a final interconnection agreement" as of June 18, 2007 anticipates a commencement date for service that even precedes the effectiveness of its authorization to provide service in that exchange.

In addition to the reasons set forth in Sections A-C of this Petition, therefore, GCI's effort to invoke Section 51.715 to expedite the start of its local exchange service must fail on the ground that it seeks to employ the Rule for a purpose it was never intended – to preempt the role of the state commission in granting and conditioning the offering of competitive local exchange service in Alaska. The Commission never suggested that the interim pricing mechanism of Section 51.715 could be used to boot strap a carrier lacking proper authorization under state law to begin operations on the basis of the Commission's regulation alone. There is no evidence in the *Local Competition Order* adopting the Rule, or elsewhere in the Commission's application of this Rule, that the Commission intended to supersede state law in this radical manner.

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[17] *See* note 7, *supra.*

[18] Order U-05-4(6), at 24.

II. UNCERTAINTY AS TO THE SCOPE OF SECTION 51.75 IS A SIGNIFICANT PROBLEM FOR ILECS AND REQUIRES A COMMISSION RULING

The language of the first sentence of Section 51.715 contains an internal ambiguity affecting its intended scope. Reading the rule to require more than interim pricing arrangements places ILECs in the impractical position of providing interconnection in the absence of any final, non-pricing terms of interconnection. Immediate interconnection requires much more than an agreement regarding pricing. Before transport and termination can take place, the parties must have an underlying agreement regarding how the two networks are going to interconnect or subject to what terms of service. As the Commission is aware, interconnection agreements can be complicated and company-specific.[19] To require an ILEC that is attempting in good faith to adhere to a statutory schedule for negotiation simultaneously to fashion interim arrangements for interconnection would thwart and pervert the statutory scheme.

Simply stated, regardless of pricing, ILECs cannot implement interconnection without numerous underlying details being first worked out. The resolution of those details is accomplished through the process established in 47 U.S.C. § 252. Interconnection occurs at the end of that process. Requiring ILECs to provide interconnection at any time during the agreement negotiation process would place them in an impractical and unfair position of providing interconnection before having established any terms as to how that interconnection should occur. It also requires the ILEC to establish two interconnection negotiation processes on simultaneous tracks: one for the underlying interconnection agreement that will be in effect for the agreement's term, and the other to set the terms for interim interconnection. This is simply impossible for a small rural, LEC with limited resources, like Interior.

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[19] As an example, the draft agreement that GCI provided to Interior at the start of its negotiations is about 80 pages long, not including the attachments to the agreement.

The circumstances of the negotiation that brought forth this petition demonstrate the difficult, and unintended, position that an ILEC, particularly a small carrier, can be placed in. Interior is a small, rural local exchange carrier serving remote regions of Alaska.[20] Interior's total operating revenue for 2006 was $14,777,212.[21] In contrast, GCI is one of Alaska's largest telecommunications providers, with annual reported revenues in 2006 of $477,300,000.[22] Due to the unique nature of its service area, and its markedly smaller size, Interior must negotiate the terms of the interconnection particular to GCI. This negotiation itself is extremely resource intensive. Interior is not able to begin negotiations with GCI for an interim interconnection agreement *in addition to* continuing its good-faith, on-going negotiations for a permanent Section 252 agreement.

There are many operational issues that remain open between Interior and GCI. Identification of some of these open issues demonstrates the impracticality of requiring Interior to establish interim interconnection with GCI. The point of interconnection is not yet defined and therefore the parties would have to reach an arrangement on that. The parties do not have agreement to a forecast of anticipated orders, and therefore Interior is unable to determine the effect that it would have on the customer service department. The parties do not have an agreement as to how they would handle inquiry and order process, and therefore there is no process for handling communication for scheduling, confirming orders, rescheduling and cancellation of service. There is no established priority for restorations in the case of major

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[20] Interior serves non-contiguous and very high cost areas. Most of its wire centers are separated by vast distances and are only accessible by boat or by plane. Seward is one of the few ITC exchanges accessible by road.

[21] *See 2006 Annual Report of Interior Telecommunications, Inc.*, filed with the RCA on April 7, 2007.

[22] *See* www.GCI.com.

outages, and no process as to how this situation would be communicated and the responsibilities of the carriers in such a situation.

There is no agreement to the use of CPNI and therefore it would be unknown who is liable for the misuse of customer information. Is it not known how 411 calls are to be routed, how 911 or E911 calls would be handled, or who would be responsible for updating the E911 database. The parties have no established process as to how to handle troubles with customer's service. Further, should any of these numerous open issues result in a dispute, as they likely could, there is no established dispute resolution process. As demonstrated by this long but not exhaustive list, there are many issues that are currently in negotiation between the parties that would make interim interconnection impractical and unreasonable.

III. THE COMMISSION SHOULD ISSUE A RULING THAT SECTION 51.715 DOES NOT REQUIRE AN ILEC TO OFFER INTERIM INTERCONNECTION DURING THE INTERCONNECTION NEGOTIATION PROCESS IN THE ABSENCE OF ESTABLISHED NON-PRICING TERMS

The Commission can remove this uncertainty in the Section 252 negotiation process by issuing a declaratory ruling that clarifies the scope of 47 C.F.R. § 51.715. As discussed herein, the Commission should clarify that Section 51.715 does not require an ILEC to offer immediate interconnection to exchange local traffic in the interim period before a final agreement regarding interconnection is reached through the negotiation and arbitration process when non-pricing terms critical to the interconnection process remain unresolved. Because the provision is intended only to establish interim pricing arrangements for transport and termination of traffic, Section 51.715 cannot be used as a general lever to demand immediate interconnection before the Section 252 negotiation process has had a chance to be completed, thereby disrupting that statutory process.

A declaratory ruling that Section 51.715 does not require an ILEC to offer immediate interconnection in this circumstance would erase the uncertainty that currently exists in the interconnection negotiation process and allow the negotiation and, if necessary, arbitration process to proceed as the Act intended. It will also ease the uncertainty facing ILECs in trying to determine how to provide immediate interconnection before the underlying details regarding how the parties' networks can interconnect have been established. Further, it will prevent requesting carriers from making similar demands for immediate interconnection under Section 51.715, even before the carrier's authorization to provide local exchange service is effective.

CONCLUSION

For the foregoing reasons, Interior respectfully requests that the Commission issue a Declaratory Ruling clarifying that 47 C.F.R. § 51.75 addresses interim transport and termination pricing, and does not require an ILEC to provide interim interconnection when it is in the process of negotiating non-price interconnection terms pursuant to the timelines established in Section 252 of the Act and when no dispute exists regarding the rates applicable to the transport and termination of traffic.

Respectfully submitted,

INTERIOR TELEPHONE COMPANY, INC.

By _____

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May 3, 2007

EXHIBIT A

April 6, 2007

TelAlaska, Inc.
d/b/a Interior Telephone Company, Inc.
Attn: Donna Rhyner
201 E. 56th Avenue
Anchorage, AK 99518

Re: Request for Interim Interconnection and Transport and Termination of Traffic Pursuant to 47 C.F.R. 51.715

Dear Donna:

General Communication Inc. ("GCI") hereby requests, pursuant to 47 C.F.R. § 51.715, that Interior Telephone Company ("ITC") on June 18, 2007,[1] commence exchanging local (*i.e.*, non-access) traffic with GCI, on an interim basis pending final negotiation and, if necessary, arbitration of a final interconnection agreement between GCI and ITC. GCI makes this request with respect to exchange of traffic with ITC within the Seward local calling area. As you know, pursuant to 51.301, by letter to you dated October 19, 2006, GCI requested that ITC enter into good faith negotiations for an interconnection agreement. These discussions with respect to a final interconnection agreement are now ongoing pursuant to the December 20, 2006 Agreement between GCI, ITC and Mukluk Telephone Company, which provides for good faith negotiation and, if necessary, arbitration of a final interconnection agreement.

Section 51.715 of the Federal Communications Commission's (FCC) rules requires an incumbent local exchange carrier such as ITC, "upon request from a telecommunications carrier without an existing interconnection arrangement with [the] incumbent LEC," to "provide transport and termination of telecommunications traffic *immediately* under an interim arrangement, pending resolution of negotiation or arbitration regarding transport and termination rates by a state commission under sections 251 and 252 of the Act." GCI fulfills the qualifications for this interim arrangement because it does not have an existing interconnection agreement with ITC and has requested negotiation of an interconnection agreement pursuant to 47 C.F.R. § 51.301. 47 C.F.R. 51.715(a)(1)-(2).

Accordingly, ITC is now required, pursuant to 47 C.F.R. 51.715(b), to "without unreasonable delay, establish an interim arrangement for transport and termination of telecommunications traffic at symmetrical rates."

[1] GCI will be prepared to interconnect and exchange traffic on June 18, 2007.

This arrangement could be achieved using existing transport facilities with the appropriate local switching protocols. Alternatively, GCI could agree to establish new interconnection circuits with each party bearing half the costs on an interim basis subject to true-up to any final agreement, should you wish to do so, provided that approach does not delay implementation of the interim traffic exchange mechanism.

Inasmuch as the Regulatory Commission of Alaska (RCA) has not established transport and termination rates according to forward looking economic cost studies, nor established transport and termination rates consistent with the default price ranges and ceiling in 47 C.F.R. 51.707, *see* 47 C.F.R. § 51.713(b)(1)-(2), GCI is prepared to exchange traffic for transport and termination reciprocally at the default rates specified in 47 C.F.R. 51.715(b)(3). Alternatively, as it proposed in its letter of October 19, 2006, GCI is willing to exchange traffic for transport and termination on a reciprocal "bill-and-keep" basis. GCI is also willing to exchange traffic at the AECA intrastate access end office switching rate of $ 0.007613/minute, or the NECA interstate end office switching rate for Band 7 (the one applicable to Interior) of $0.017238/minute. ITC may choose which of these rates would be used as the symmetrical interim reciprocal compensation rate by both ITC and GCI. No matter which rate is used as the interim rate, all payments under the interim arrangement would be trued-up to the rates established in the final GCI-ITC interconnection agreement, once such agreement is approved by the RCA. *See* 47 C.F.R. 51.715(d).

The FCC has made very clear the reasons for these mandatory interim arrangements: "We are concerned that some new entrants that do not already have interconnection arrangements with incumbent LECs may face delays in initiating service solely because of the need to negotiate transport and termination arrangements with the incumbent LEC." *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd. 15499-, 16029 (¶ 1065)(1996). That is the case here. If GCI must wait until negotiation and, if necessary, arbitration, and RCA approval are completed before it can interconnect and exchange traffic with ITC, GCI's entry as a facilities-based local exchange carrier in these areas will be delayed.

GCI also requested in its letter of October 19, 2006, that ITC provide GCI with long-term number portability in the specified exchanges as well as the remaining ITC exchanges where GCI is certified to provide service. The six month implementation period with respect to that request will expire on April 19, 2007. Accordingly, GCI requests ITC provide either long term or, if that is not yet possible, interim number portability as part of the interim interconnection and transport and termination arrangement.

We look forward to hearing from you, by Friday, April 13, 2007 regarding plans to move forward with implementing the requirements of 47 C.F.R.§ 51.715 on an interim basis, pending final negotiation, arbitration (if necessary) and RCA approval of a final interconnection agreement between GCI and ITC, and confirmation of number portability implementation.

Sincerely,

F.W. Hitz III
Vice President
Regulatory Economics & Finance

cc: Heather Grahame

EXHIBIT B

April 13, 2007

Frederick W. Hitz, Vice President
GCI
2550 Denali Street
Anchorage, AK 99503-2781

Re: Applicability of 47 C.F.R. § 51.715

Dear Rick:

We received and read GCI's request for an interim exchange of local traffic pursuant to 47 C.F.R. § 51.715, a request sent on the first day on which you knew I was out of town. Your letter states that GCI will be prepared to offer service June 18, 2007. This is puzzling, as GCI has not provided the required 90-day notice prior to initiating local service.

In any event, we have analyzed the rule and the FCC's First Report and Order, and do not believe that the rule applies to Interior's negotiations with GCI. We believe you are reading the regulation too broadly.

In 1996, the FCC promulgated 47 C.F.R. § 51.715 (entitled "Interim transport and termination pricing") in response to the lengthy time required to conduct forward-looking, economic cost studies to establish symmetrical rates for reciprocal compensation. The primary reason the FCC permitted interim transport and termination pricing was a concern that the time required for the regulatory process to establish the appropriate rates for reciprocal compensation would exceed the timeline set forth in Section 252 of the Telecommunications Act of 1996 for negotiating and arbitrating an interconnection agreement. The FCC stated:

> As with unbundled network elements, we recognize that it may not be feasible for some state commissions conducting or reviewing economic studies to establish transport and termination rates using our TELRIC-based pricing methodology **within the time required for the arbitration process**, particularly given some states' resource limitations." *Local Competition Order* at Para. 1060. (emphasis added)

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Interior Telephone
Mukluk Telephone
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We are not conducting such studies in the current Interior-GCI interconnection negotiations and arbitration, and we will be proposing bill and keep for transport and termination. Similarly, the RCA is not conducting any proceeding for the development of state rates for reciprocal compensation that could impact the timing of the implementation of the interconnection agreement that we are negotiating. The FCC intended an interim arrangement for the transport and termination of local traffic as an alternative when a lengthy cost docket threatened to thwart the statutory timeline. Since the risk of a lengthy cost docket does not exist here, GCI is not entitled to invoke Section 51.715 and contravene the statutory timeline the parties have consistently heeded throughout the negotiation and that is set forth in our Settlement Agreement.

Moreover, we do not believe that 47 C.F.R. § 51.715 requires Interior to provide immediate interconnection to GCI for several additional reasons. The first reason is practical. Even if Interior and GCI were required to agree to interim pricing subject to true-up, that still does not give GCI immediate interconnection in Seward because immediate interconnection requires much more than an agreement regarding pricing. Before transport and termination can take place, the parties must have an underlying agreement regarding how the two networks are going to interconnect. These agreements, as you know, are complicated and company-specific. The draft agreement you provided us in early February to establish the terms of interconnection is about 80 pages long (without attachments), and the length of the agreement demonstrates my point. Simply stated, regardless of pricing, we can't implement interconnection without hundreds of underlying details being first worked out. We are currently in the middle of that process, consistent with 47 U.S.C. § 252.

Second, the scope of 47 C.F.R. § 51.715 is limited to interim pricing, and not to interconnection generally.[1] For example, the title of the regulation, which is "Interim transport and termination pricing," only concerns interim pricing. The cases that the FCC itself cites as authority in the *Local Competition Order* at Paragraph 1067, footnote 2549, for its ability to require interim pricing subject to true-up, are cases where the courts upheld the FCC's interim pricing authority. The thrust of the relevant provisions of the *Local Competition Order* also focus on the FCC's ability to order interim pricing: the relevant paragraphs are all contained in the section entitled "Pricing Methodology," and include subtitles such as "Interim Transport and Termination Rate Levels," "Pricing Rule," "Cost-Based Pricing Methodology," and "Default Proxies." *See Local Competition Order* at ¶¶ 1046 – 1068. These provisions demonstrate that the regulation on which GCI relies for its demand for immediate interconnection is limited to interim

[1] In so doing, the regulation presumes that an existing interconnection agreement exists regarding how the two networks will transport and terminate one another's local traffic. This presumption is not illogical, given that the assumption in the Telecommunications Act of 1996, and the First Report and Order, that the incumbent local exchange carrier is a large carrier (i.e. a Bell Operating Company). Here, however, the incumbent local exchange carrier is a small, rural carrier which does not have cookie-cutter agreements with multiple carriers.

pricing. Its scope does not extend to all terms and conditions governing how the two companies will transport and terminate one another's traffic.

We recognize from your letter that you have focused on the word "arrangement," as it is used in the first sentence of the regulation, and that you believe that this is synonymous with "interconnection agreement." We disagree. The entire focus of the regulation, as discussed above, is on interim pricing, and the word "arrangement," which is used in the first sentence of the regulation and several times thereafter, means a financial arrangement, and not an underlying interconnection agreement.

Third, 47 C.F.R. § 51.715 cannot be read to require immediate interconnection where an underlying agreement does not exist because to do so would undercut federal law. In 47 U.S.C. § 252, Congress established time frames for negotiating and arbitrating an interconnection agreement. The FCC cannot preempt Congress' statutory timeframes through promulgating a regulation which shortcuts those timeframes and requires immediate interconnection. Rather, 47 C.F.R. § 51.715 must be read in harmony with 47 U.S.C. § 252, and they are harmonized by limiting the scope of 47 C.F.R. § 51.715 to immediate pricing.

There are other reasons why we do not think that this regulation can be read the way you are reading it but these are our main reasons. We look forward to continuing to progress with the Interior-GCI Interconnection Agreement pursuant to Section 252.

As a final matter, you asked for confirmation that ITC is LNP-capable in Seward. ITC is.

Sincerely,

Donna Rhyner

Donna Rhyner

cc: Heather Grahame
Mark Moderow

EXHIBIT C

April 24, 2007

TelAlaska, Inc.
d/b/a Interior Telephone Company, Inc.
Attn: Donna Rhyner
201 E. 56th Ave.
Anchorage, AK 99518

Re: Request for Interim Interconnection and Transport and Termination of Traffic Pursuant to 47 C.F.R. § 51.715

Dear Donna:

I received your letter of April 13, 2007 ("ITC April 13 Letter") and am disappointed that Interior Telephone Company ("ITC") refuses to comply with its obligations under Section 51.715 of the Federal Communications Commission's ("FCC") rules, 47 C.F.R. § 51.715. As discussed below, the objections you set forth misconstrue the plain language and purpose of the rule, and lack any legal or practical basis for ITC's refusal to commence interim traffic exchange with General Communication, Inc. ("GCI"). GCI therefore requests that ITC reconsider its refusal and agree to commence exchanging local traffic on an interim basis with GCI on June 18, 2007 as requested by GCI in its letter of April 6, 2007 ("GCI April 6 Letter"). Please advise me within five business days whether ITC will continue to refuse to meet its obligations under Section 51.715 of the FCC's rules.

As we explained in our letter April 6 letter, Section 51.715 of the FCC's rules requires ITC, "upon request from a telecommunications carrier without an existing interconnection arrangement with" ITC to "provide transport and termination of telecommunications traffic *immediately* under an interim arrangement." 47 C.F.R. § 51.715(a) (emphasis added). GCI has satisfied the prerequisites for an interim arrangement because it does not have an existing interconnection agreement with ITC and has requested negotiation of an interconnection agreement pursuant to 47 C.F.R. § 51.301. *See* 47 C.F.R. § 51.715(a)(1) & (2). In your April 13 Letter, ITC does not dispute that GCI has satisfied these prerequisites.

Further, GCI and ITC have existing physical interconnection facilities that would allow the immediate exchange of traffic as contemplated under Section 51.715. Both our companies are already interconnected for the exchange of long distance traffic. There is already a DS-3 facility, which GCI leases from ITC, running between ITC's switch and GCI's point-of-presence in Seward. On an interim basis, GCI could reallocate some of its capacity on this DS-3 to carry local interconnection traffic, provisioned as two one-way trunk groups over separate T-1 facilities. In addition, GCI anticipates that additional DS-1 capacity will be coming available on this DS-3 facility within the next couple of weeks. Thus, the facilities already exist for physical interconnection, and all that would need to be accomplished to begin traffic exchange would be for ITC and GCI

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respectively to load each others' codes into their switches and to make software changes on the trunk groups necessary to point traffic to the designated trunks. Moreover, you indicate that you desire bill-and-keep for transport and termination – which, as stated in our April 6 Letter is acceptable to GCI, as would be a number of alternative, symmetrical rates. Because your switch is already LNP-capable, no further steps need to be taken to implement interim traffic exchange pursuant to Section 51.715.

Your arguments that Section 51.715 does not require ITC to exchange traffic with GCI on an interim basis, and to take steps necessary to do so, are without merit.

First, by its express terms, the purpose of Section 51.715 is to allow a requesting carrier that does not have a current interconnection agreement to begin interconnecting and exchanging traffic *prior* to and pending completion of such an interconnection agreement. Section 51.715 expressly directs that an incumbent LEC "shall provide transport and termination of telecommunications traffic *immediately* under an interim arrangement, *pending* resolution of *negotiation or arbitration* regarding transport and termination rates and approval of such rates by a state commission under sections 251 and 252 of the Act."

Thus, Section 51.715 does not, as you claim, address potentially "lengthy cost dockets" by providing for interim pricing arrangements pending completion of state ratemaking proceedings. Instead, Section 51.707 directly addresses the issue of interim prices for the transport and termination of telecommunications traffic pending adjudication of TELRIC rates. *See* 47 C.F.R. § 51.707. Because ITC's reading of Section 51.715 ignores Section 51.715's plain language and would render Section 51.707 superfluous and duplicative, that reading is not reasonable.

The FCC has explained its reasons for Section 51.715, which are wholly applicable here: "We are concerned that some new entrants that do not already have interconnection agreements with incumbent LECs may face delays in initiating service solely because of the need to negotiate transport and termination agreements with the incumbent LEC." *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* First Report and Order, 11 FCC Rcd. 15499, 16029 (¶ 1065) (1996) ("*Local Competition Order*"). The FCC further explained, "In particular, a new entrant that has already constructed facilities may have a relatively weak bargaining position because it may be forced to choose either to accept transport and termination rates not in accord with these rules or to delay its commencement of service until the conclusion of the arbitration and state approval process." *Id.* Thus, the FCC concluded, "To promote the Act's goal of rapid competition in the local exchange, we order incumbent LECs upon request from new entrants to provide transport and termination of traffic, on an interim basis, pending resolution of negotiation and arbitration regarding transport and termination prices, and approval by the state commission." *Id.*

GCI is now facing precisely the delay contemplated by the FCC and addressed by Section 51.715. GCI will provide telephone service during this interim period over its own network. Interconnection facilities already exist between the two carriers that can be

used for traffic exchange. Thus, in the absence of interim traffic exchange under Section 51.715, GCI would be compelled "to delay its commencement of service until the conclusion of the arbitration and state approval process." *Id.* ITC's refusal to comply with its obligations under Section 51.715 therefore frustrates the express purpose of the rule, as clearly stated by the FCC in the *Local Competition Order*.

Second, as discussed above, there are no practical obstacles to immediate interconnection. GCI and ITC already have physical interconnection for the exchange of long distance traffic, and can use existing physical interconnection facilities to exchange local traffic. If ITC prefers to set up new interconnection circuits, GCI has already proposed a method for doing so. GCI April 6 Letter at 2.

Moreover, your claim that there are "hundreds of underlying details" that must be "first worked out" before GCI and ITC can exchange traffic is simply not true. ITC April 13 Letter at 2. While GCI and ITC are exchanging a lengthy draft interconnection agreement, only four pages of that draft address physical interconnection, all of which largely reiterate the requirements of rules, the establishment of points of interconnection, general methods of physical interconnection, and the responsibility of each carrier to program its own switches to accomplish interconnection and traffic exchange. *See* Section 7.1.1-7.1.3 of Exhibit A, attached. There is also a single page that addresses trunking and a single paragraph on signaling interconnection. *See* Sections 7.2.2.6 (trunking requirements) and 7.2.2.3 (signaling options). None of these provisions indicates any significant details that must be resolved for interconnection of GCI and ITC networks at a single switch in Seward to exchange traffic with respect to a single ITC exchange on an interim bill-and-keep basis, the pricing you have indicated you prefer. Any minor technical issues could certainly be resolved well in advance of June 18, 2007, GCI's requested date to commence the exchange of local traffic.

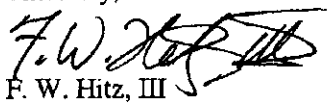
Third, ITC's argument that the FCC lacks authority under Section 252 of the Telecommunications Act of 1996 to require interim interconnection is not supported by the statute. Section 252's establishment of time frames for negotiation and arbitration in no way limits the FCC's authority to adopt rules implementing those requirements, and the FCC has, in fact, adopted myriad rules implementing Section 252. Similarly, nothing in the language of the statute precludes adoption of rules that would ensure that competitors have an opportunity to exchange traffic during negotiation and arbitration. Indeed, by facilitating competition and market entry, the Commission's Rule 51.715 furthers the aims of Section 252, and is thus entirely consistent with Congressional intent.

Fourth, your suggestion that Section 51.715 was only meant to apply to the Bell Companies is also incorrect. In its' *Local Competition Order*, the FCC expressly rejected a request to exempt small and mid-sized incumbent LECs from the scope of Section 51.715. *Local Competition Order*, 11 FCC Rcd. at 16031 (¶ 1068).

For the foregoing reasons, ITC is compelled by Section 51.715 to exchange traffic with GCI on an interim basis. GCI reiterates its requests that ITC agree to do so commencing June 18, 2007.[1]

Please let me know within five business days whether ITC will continue to refuse to meet its obligations under 51.715. If we have not heard from you after five business days, we will have to assume that you will continue to breach your legal obligations.

Sincerely,



F. W. Hitz, III
Vice President
Regulatory Economics and Finance

[1] GCI has requested that interim traffic exchange commence June 18, 2007, so that there can be some time for testing prior to GCI's commercial launch. As required by the Regulatory Commission of Alaska, GCI will provide ITC with notice ninety days prior to GCI's commencement of commercial service in Seward.

EXHIBIT D

May 2, 2007

Frederick W. Hitz
Vice President, GCI
2550 Denali Street
Anchorage, AK 99503-2781

Re: Request for Interim Interconnection

Dear Rick:

I am writing in response to your April 24, 2007 letter in which GCI continues to assert that Section 51.715 of the Federal Communications Commission's Rules, 47 C.F.R. § 51.715, allows GCI to require that Interior provide it immediate interconnection while the parties are in the process of negotiating a permanent interconnection agreement pursuant to Section 252 of the Communications Act ("April 24 Letter"). In the April 24 Letter, you asked Interior to respond to GCI's request within five business days.

As Interior has made clear in the email exchanges we have had this week, Interior is prepared to conduct testing with GCI on a reasonable basis, prior to the actual start date on which GCI will commence providing local exchange service. As we have explained in prior correspondence, however, Interior is not in a position to provide GCI with interim interconnection on terms that have not been agreed yet. We don't think that the FCC rule requires this. Transport and termination rates, with which Section 51.715 is concerned, are not going to be an issue in our negotiation, but a large number of non-price, operational issues remain unresolved at this time. It is impractical for ITC to consider addressing the many details required to provide interim interconnection; we are working those matters out in our negotiation with GCI of a permanent interconnection agreement, and need to concentrate our efforts on that activity as called for under Section 252 of the Act. We don't have the resources to conduct dual track negotiations. We are a small, rural telephone company with extremely limited resources and personnel.

We look forward to continuing to progress with the Interior-GCI Interconnection Agreement pursuant to Section 252, and with discussions regarding testing prior to GCI's start date for its provision of local service.

Sincerely,

Donna Rhyner

Donna Rhyner
CIO, TelAlaska, Inc.

cc: Heather Grahame
Mark Moderow

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